

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)

THIS DOCUMENT RELATES TO:)
All Cases)
)
)

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

**THE STOPNC DEFENDANTS'
MOTION FOR EXTENSION OF DEADLINE TO FILE A RESPONSE TO
THE PSC'S BRIEF AND ASSOCIATED MOTION *IN LIMINE*
REGARDING MICHAEL O'NEAL [Doc. 2608, 2609]**

Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN, CNOR; and Vaughan Allen, MD ("STOPNC Defendants") file this Motion for Extension of Deadline to file a response to the PSC's brief at Doc. 2608 and 2609 regarding the applicability of the quality improvement privilege to Michael O'Neal ("Dr. O'Neal"). As grounds for the motion, the STOPNC Defendants state:

1. At Doc. 2534, the Court allowed the PSC to take the deposition of Michael O'Neal, STOPNC's pharmacy consultant, on limited topics, to evaluate the applicability of Tennessee's quality improvement privilege.¹ Pursuant to that Order, the PSC was allowed, after the deposition, to file a brief challenging the application of the privilege, and the STOPNC Defendants were given 14 days to respond.

¹ TENN. CODE ANN. § 68-11-272.

2. Dr. O’Neal’s deposition occurred on January 11, 2016.
3. On January 25, 2016, the PSC filed a brief and memorandum in support addressing the applicability of the privilege [Docs. 2608 and 2609]. The PSC argued that the privilege does not apply or, in the alternative, if it does apply, the Court should preclude mention of Dr. O’Neal’s involvement.²
4. Following the filing of the brief, counsel for the STOPNC Defendants reached out to the PSC and proposed an agreement to resolve the O’Neal issues, an agreement that would address each side’s concerns (maintain the privileged information, while eliminating the possibility that Dr. O’Neal’s involvement could be used as a “sword”). Counsel outlined the proposed stipulation on Saturday, January 30. A phone call followed on Thursday, February 4. In the phone call, the PSC agreed, generally, that the proposed stipulation likely would work to resolve the outstanding O’Neal issues, pending drafting the stipulation. The PSC agreed to draft and send a proposed stipulation.
5. A stipulation extending the time to respond to the brief was filed, to allow time to develop the stipulation on the O’Neal issues [Doc. 2627].
6. The PSC sent a draft stipulation on February 17, 2016. The STOPNC Defendants still anticipate being able to work this out by agreement but will need time to evaluate the stipulation, consult with other involved counsel, make any edits, and exchange drafts.

² The STOPNC Defendants maintain the position that the privilege applies to Dr. O’Neal’s function and any communications and documents related to his quality consulting, and that this was solidified by his testimony in his deposition (see pages 94-108 of Dr. O’Neal’s deposition). That testimony, coupled with the remaining testimony and proof in the record, makes it clear that the privilege applies. The stipulation that the parties are working on would resolve the O’Neal privilege issues and the PSC’s pending motion *in limine* regarding Dr. O’Neal, and would make the pending O’Neal issues raised by the PSC and opposed by the STOPNC Defendants and O’Neal moot.

7. The STOPNC Defendants request 14 additional days (through March 3) to file a brief in response to the PSC's brief at Doc. 2608 and 2609. In that 14 days, the STOPNC Defendants will continue working to resolve the O'Neal issues by agreement, and expect to be able to do so.
8. No parties will be prejudiced by two additional weeks on this issue. It promotes judicial economy to encourage resolution of this issue to obviate the need for additional briefing and argument by multiple parties and non-parties. The PSC agrees to the additional two weeks to work on the stipulation.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

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* Admitted pursuant to MDL Order No. 1.

** Admitted *pro hac vice*.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 18th day of February, 2016.

/s/ Chris J. Tardio _____